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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/804,339

03/19/2004

Patricia Cruz-Perez

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EXAMINER

WOOLWINE, SAMUEL C

ART UNIT	PAPER NUMBER
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1637

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06/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

10/804,339

Applicant(s)

CRUZ-PEREZ ET AL.

Examiner

Samuel Woolwine

Art Unit

1637

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 21 February 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

JEFFREY FREDMAN
PRIMARY EXAMINER

6/14/07

Continuation of 10. Other (including any explanation in support of the above items): 37 CFR 41.37 (c)(2) states:

"A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal."

Applicant's brief filed 2/21/2007 contains evidence relied upon from several references not of record. These references are:

Morris, C. 1992. In: Dictionary of Science and Technology, p. 1723. Academic Press, San Diego, CA (cited on page 11).

Brock, T.D., et al. 1994. In: Biology of Microorganisms, 7th Ed., p. 870. Prentice Hall, NJ (cited on pages 11-12).

Suzuki, M.T. et al. 2000. Quantitative analysis of small-subunit rRNA genes in mixed microbial populations via 5'-nuclease assays. Applied and Environmental Microbiology. 66:4605-4614 (cited on page 19).

Greisen, K.M. et al. 1994. PCR primers and probes for the 16S rRNA gene of most species of pathogenic bacteria, including bacteria found in cerebrospinal fluid. Journal of Clinical Microbiology. 32:335-351 (cited on pages 19-20).

Nadkarni et al. 2002. Determination of bacterial load by real-time PCR using a broad-range (universal) probe and primers set. Applied and Environmental Microbiology. 148:257-266 (cited on page 21).

Rintala, H. and A. Nevalainen. 2006. Quantitative measurement of streptomyces using real-time PCR. Journal of Environmental Monitoring. 8:745-749 (cited on page 21).

This evidence was never presented in prior arguments, nor have the references been previously cited by either the Examiner or the Applicant.